IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

WP(C).No. 28175 of 2004(D)

PETITIONERS:
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1. **JOSE JOSEPH, PERUMPALLIL HOUSE,**
   AMPARA NIRAPPEL P.O., KOTTAYAM DISTRICT,
   REP. BY HIS POWER OF ATTORNEY HOLDER P.C. JOSEPH
   PERUMPALLIL HOUSE, AMPARA NIRAPPEL P.O.,
   KOTTAYAM DISTRICT.

2. **JOHNYACHAN JOSEPH, NEERAKKAL HOUSE,**
   MUTTUCHIRA P.O., KOTTAYAM DISTRICT.

BY ADV. SRI.O.V.RADHAKRISHNAN (Sr.)
SRI.SHAJI THOMAS PORKKATTIL

RESPONDENTS:
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1. **LAND ACQUISITION OFFICER, R.D.O., PALA.**

2. **LAND REVENUE COMMISSIONER,**
   THIRUVANANTHAPURAM.

3. **SECRETARY TO GOVERNMENT OF KERALA**
   (LOCAL ADMINISTRATION DEPARTMENT)
   THIRUVANANTHAPURAM.

4. **PALA MUNICIPALITY, REPRESENTED BY**
   THE SECRETARY, PALA.

BY GOVERNMENT PLEADER SRI.MUHAMMED ANSAR
BY ADV. SRI.V.M.KURIAN
SRI.A.V.THOMAS
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.28175/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE DECISION NO. 2 DT.30.9.02 OF THE MUNICIPALITY.

EXT.P2:- COPY OF THE TENDER NOTICE DT.3.2.03 ISSUED BY THE SECRETARY OF THE MUNICIPALITY.

EXT.P3:- COPY OF THE WORK ORDER DT.18.7.03 ISSUED BY THE SECRETARY OF THE MUNICIPALITY.

EXT.P4:- COPY OF THE NOTIFICATION NO.C 3807/99 DT.30.11.01 ISSUED BY THE LAND ACQUISITION OFFICER (R.D.O., PALA).

EXT.P5:- COPY OF THE COUNTER AFFIDAVIT DT. 18.3.OR FILED BY THE SECRETARY, PALA MUNICIPALITY IN CMP. NO.13613/03 IN OP. NO.7810/03.

EXT.P6:- COPY OF THE JUDGMENT DT.7.11.03 IN OP. 78103/03 OF THIS HONOURABLE COURT.

EXT.P7:- COPY OF THE DECISION NO.1 DT.5.2.04 OF THE MUNICIPAL COUNCIL , PALA .

EXT.P8:- COPY OF THE SAID ORDER DT.7.5.04 OF THE 1ST RESPONDENT.

EXT.P9:- COPY OF THE NOTIFICATION NO.C.2570/04)1) DT.5.8.04 ISSUED BY THE 1ST RESPONDENT.

EXT.P10:- COPY OF THE NOTIFICATION NO.C-2570/04(2) DT.5.8.04 ISSUED BY THE 1ST RESPONDENT.

EXT.P11:- COPY OF THE APPLICATION DT.23.9.04 SUBMITTED BY THE POWEROF ATTORNEY HOLDER OF THE 1ST PETITIONER.

EXT.P12:- COPY OF THE TENDER NOTICE PWD1-655/01 DT.17.8.04 ISSUED BY THE 4TH RESPONDENT.

EXT.P13:- COPY OF THE NEWS PAPER REPORT APPEARED ION THE MANGALAM DAIL DT.5.9.04.

EXT.P14:- COPY OF THE AGREEMENT DT.26.3.01 EXECUTED BETWEEN THE 2ND PETITIONER AND THE POWER OF ATTORNEY HOLDER OF THE 1ST PETITIONER.

EXT.P15:- COPY OF THE PROCEEDINGS NO.LR.C-33662/04 DT.21.7.04 OF THE LAND REVENUE COMMISSIONER.

EXT.P16:- COPY OF THE DECISION NO.2 DT.4.11.04 OF THE MUNICIPAL COUNCIL, PALA.

EXT.P17:- PHOTOGRAPHS ALONG WITH NEGATIVES OF THE WELL SHOWING THE COMPOUND WELL AND THAT THE WELL IS COVERED.

EXT.P18:- PHOTOGRAPH ALONG WITH NEGATIVE SHOWING THE APPROACH ROAD TO THE LAND OWNED BY THE MUNICIPALITY.

EXT.R4(a):- COPY OF THE RESOLUTION NO.4 DT.30.1.04 OF THE MUNICIPAL COUNCIL.

EXT.R4(b):- COPY OF THE RESOLUTION DT.16.5.05.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 28175 OF 2004

Dated this the 26th day of March, 2007

JUDGMENT

Invocation of the emergency provisions under Section 17(4) of the Land Acquisition Act for acquisition of lands belonging to the petitioners for the construction of a bus terminal for the 4th respondent Municipality is under challenge. The 1st respondent is the Land Acquisition Officer, 2nd respondent is the Land Revenue Commissioner, 3rd respondent is the State and the 4th respondent is the requisitioning authority, the Palai Municipality. The petitioners submit that by sale deed No.2361 of 81 the Municipality purchased two acres and 10 cents of land for construction of an Indoor Stadium. But since Stadium was never constructed,the Municipality resolved to construct a private bus terminal on the said land. The project was included in the 2002-03 financial year plan. Technical sanction was given to the project and the Government also approved the project which was included under the centrally sponsored IDSM scheme for the Municipal Town. The Council on 30.9.02 gave administrative sanction for constructing the bus terminal on the above land at a cost of Rs.18,41,000/-, tenders were invited and work was also awarded to one contractor by name Sri.P.C. Sebastian. Exts.P1, P2, P3 respectively are copies of the Municipal resolution,

tender notice and the work order. Since the land purchased by the Municipality was not having direct road frontage, steps were taken for the acquisition of about 42 cents of land for the construction of an approach road. Ext.P4 is the notification dt.30.11.01 issued by the Land Acquisition Officer for acquisition for the purpose of construction of the approach road. In the meanwhile, the Municipality also decided to dig a pond in the corner of its land having a total extent of 2 acres and 10 cents, as a water source for the supply of drinking water. A storage tank was also constructed at about 4 Kms away from the proposed pond and substantial amounts were spent from the Municipal fund for the construction of the pond and the storage tank. But when the Municipality issued Ext.P2 tender notice a resident of the Municipality approached this Court by filing OP No.7810 of 2003 seeking appropriate directions to the Municipality for protecting the pond from any kind of possible pollution due to the construction of bus terminal in the adjacent properties. The Municipality filed Counter affidavits contending that the bus terminal construction is a project absolutely necessary in public interest and requesting for permission to implement that project immediately. Ext.P5 is copy of the counter affidavit submitted by the Municipality in that case. Ext.P6 is copy of the judgment dt.7.11.03 passed by this Court in that original petition. This Court under Ext.P6

permitted the Municipality to go ahead with the construction of the bus terminal, but at the same time directed the DMO to suggest remedial measures for preventing any possible pollution of water in the pond to be dug by the Municipality. The petitioner submits that subsequently the Municipality did everything except the actual construction of the bus terminal on the land. Substantial amounts were expended for ground leveling, for approach road construction and for construction of the protection/support wall for approach road etc. From the total estimate of Rs.18,41,000/- , Rs.10 lakhs is already spent from the Municipal fund. Almost all the remedial measures suggested by the DMO pursuant to Ext.P6 were taken by the Municipality and the Municipality requires to spent only Rs.1 lakh more for providing a drainage system and for constructing the protection wall for the pond.

2. The petitioner alleges that while matters stood so surprisingly the Municipality decided to drop the construction of the bus terminal in the land owned by the Municipality and has quite surprisingly resolved on 5.2.04 to acquire 1 Acre and 13 cents of land belonging to the petitioners by invoking the emergency Clause under Section 17(4) of the Land Acquisition Act. The petitioners point out that their properties having 1 Acre and 13 cents is lying just opposite to the land owned by the Municipality where the construction of the bus terminal was going on

and no consultation has been made with the RTA as required under Rule 344 for establishing the bus terminal on the petitioners land. They allege that there are no valid or good reasons for the Municipality to abandon the construction of the private bus terminal at half way. Ext.P7 is copy of the resolution dt.5.2.04 of the Municipal Council. Pursuant to Ext.P7 the Municipality approached the Urban Affair Director seeking permission for invocation of the emergency Clauses under Section 17(4) for Acquisition and ultimately the Government passed Ext.P8 order granting permission to the Municipality for acquiring the petitioner's property on condition that the Municipality should bear the entire expenses for the acquisition of the land. Ext.P8 is copy of that Government Order. The petitioners challenged Exts.P7 and :8 by filing WP(C) No.18603 of 2004 before this Court. During the pendency of that Writ Petition the 2nd respondent Land Revenue Commissioner directed the 1st respondent to invoke Section 17(4) and to dispense with the enquiry proceedings contemplated under Section 5 A. Thereafter the 1st respondent issued combined notification under Section 4(1) and Section 6(1) for acquiring petitioners land by invoking emergency Clauses. Exts.P9 and P10 are copies of the above notifications. The petitioner submitted Ext.P11 application dt.23.9.04 for a copy of the proceedings of the Land Revenue Commissioner so as to challenge the same before

this Court.

3. Petitioners submit that the decision to acquire their land for construction of the private bus terminal is illegal, arbitrary and malafide and there is no reason for invoking emergency provisions and to dispense with the enquiry as contemplated under Section 5A. Petitioners point out that there are already two private bus stands functioning in the Municipality. The town bus stand is hardly 1½ Kms from the proposed site. There is no real need or necessity for constructing a third private bus terminal. Even in the Cochin Corporation, which is the largest city in Kerala, there is only one private bus terminal at Kaloor. The Municipality is in deep financial crisis and is unable to discharge its existing liabilities due to Municipal Contractors and contractors are refusing to take up public works tendered by the Municipality. Several works for this reason are being re-tendered and Ext.P12 is copy of a re-tender notice. The Municipality is unable to maintain the existing private bus terminal at Kottaramattam due to financial constraints. Ext.P13 newspaper notification is relied on in this context. Impugning Exts.P9 and P10 on various grounds the petitioners pray in this Writ Petition for a writ of certiorari quashing Exts.P9 and P10; a writ of mandamus be issued commanding respondents 1 & 2 to produce the proceedings of the Land Revenue Commissioner

dt.21.7.04 and to issue a writ of certiorari to quash the same. Petitioner also seeks a declaration that Exts.P9 and P10 and the proceedings referred to in Ext.P9 are illegal and malafide.

4. The 4th respondent Municipality has filed a counter affidavit. It is stated therein that Pala Municipality town is a fast expanding town. It is necessary to develop the infrastructure facilities in tune with the growth of the town. Presently there is only one bus terminal by name Kottaramuttom bus stand. This is in the western side of the town by the side of the State Highway. Besides that there is a bus bay which is called as town bus stand in the centre of the town but the so called town bus stand is only for taking and dropping of passengers. The Municipal Council decided to provide a bus terminal in the eastern part of the town near the State Highway in about 2 acres of land which was purchased by the Municipality in 1981 for the purpose of Indoor Stadium. Portion of that land was utilised for construction of a well for serving the Kaveekunnu Municipal drinking water supply project taken up under the Peoples' Planning Programme and the proposal was for utilising the remaining part of the land for providing a bus terminal. The proposal was approved by the State and Central Governments and the project was included in the IDSMT Scheme for Pala Municipal town. Considerable progress towards implementation of the scheme was

made but at that time one Mr.Kurian Joseph filed OP No.7810 of 2003 which was disposed of by this Court by judgment dt.7.11.03, directing the Municipality to prepare a sketch of the bus terminal and to get approval of the District Medical Officer who is free to give suggestions if necessary in consultation of Executive Engineer of the Water Authority regarding the precautions to be taken for protecting the well for drinking water from contamination due to the functioning of the bus terminal. The Medical Officer following the suggestions made by the Water Authority issued a letter on 17.1.04 directing the Municipality to take various precautionary measures including protection wall on all sides having 2.4 meters height and 15 meters distance from the wall. The Municipal Council deliberated on the directions and found that it will not be practicable to comply with the directions of the Medical Officer fully. Council was not inclined to spend huge additional amounts and resolved to drop the bus terminal construction in the said land. The decision was taken by the Municipal Council with just one dissenting vote. Ext.R4(a) is copy of the above resolution dt.30.01.07. The work of construction of the bus terminal in the abandoned site had not actually commenced. In the meanwhile, the Municipality agreed in principle to transfer the said site to the Government for construction of a Court Complex at Pala. By resolution dt.05.02.04 the Municipal Council resolved to acquire an

extent of 45.52 ares consisting of 37.81 ares of the 1st petitioner and 04.07 ares of Smt.Jessy Joseph. The land proposed to be acquired has direct access to the State Highway, while the other site had no direct access from the State Highway. Medical Officer, DMO has certified that this land is fit for construction of a bus terminal. The Government has granted permission on 07.05.04 to invoke emergency clauses in the Land Acquisition Act for acquiring this land and has appointed a land acquisition officer. The impugned notifications are justified by the Municipality on the ground that the decision was taken by the Municipal Council in the interest of the Town and the general public. There is no malafides or arbitrariness in the decision of the Municipality. The approach road constructed to provide proper access to the abandoned site and ground leveling done are works of improvement of the site and not part of the bus terminal construction. The project is proposed to be implemented in the new site expeditiously and the urgency clause is invoked mainly to avoid delay.

5. The 1st respondent, RDO-Land Acquisition Officer has filed a counter affidavit. It is contended therein that the Government accorded sanction to acquire the said land invoking urgency Clause under Section 17(4) of the Land Acquisition Act vide GO(Rt) No.1474/04/LSGD dt.7.5.04. In the requisition it is stated that taking possession of the land

in advance by invoking the urgency Clause under Section17 of the Act is necessary. It is also stated that the bus terminal is necessary for the development of Pala town. As the urgent requirement of the said land is necessary to complete the bus terminal at the earliest, a proposal requesting sanction under Section 17(4) of the Land Acquisition Act 1894 to dispense with the objection hearing provision under Section 5 (A) of the Act was submitted to the District Collector for onward transmission to the Commissioner, Land Revenue. The Commissioner of Land Revenue, Thiruvananthapuram vide proceedings NO.C3-33662/04 dt.21.7.04 has accorded sanction under Section 17(4) of the Land Acquisition Act to dispense with the provision for hearing objection under Section 5A of the Act for the acquisition. Accordingly, composite notification in Form No.3(c) of the Land Acquisition Rules as required under sub Section 17 and notification under Section 6(1) of the Kerala Survey and Boundaries Act were published in the Gazette. Notification was published in the Deepika daily on 6.9.04 and in the Mangalam daily on 8.9.04. The same was published at the site on 17.9.04.

6. The petitioner has submitted a reply affidavit reiterating his earlier contentions and refuting the contentions raised through the counter affidavit . Along with this reply affidavit Ext.P15 proceedings of Land Revenue Commissioner subsequently obtained is produced. So

also produced Ext.P16 which is copy of resolution dt.4.11.04 of the Municipal Council decided to construct the private bus terminal in the land owned by the Municipality. Referring to Ext.P16 it is contended that there is no need for the Municipality to acquire the petitioners' land for the purpose of constructing a bus terminal. It is reiterated that there is no necessity for invoking the emergency provisions under Section 17 (4) of the Land Acquisition Act. The suggestions made by the DMO are also complied with by the Municipality. The impugned decisions are vitiated as they are clear abuse of power by a statutory authority.

7. The attention of Sri.V.M.Kurian, Standing Counsel was drawn to Ext.P16. He submitted that the Municipality has not taken any decision to withdraw from the disposal to acquire the petitioner's property. He was accordingly directed to ensure that an additional affidavit is submitted by the Municipality. Accordingly, the Municipality has on 28th October 2005 filed an additional affidavit. It is submitted therein that Ext.P16 resolution has been produced by the petitioners to make it appear that the Municipality is resolving to drop the Land Acquisition Proceedings. The said resolution happened to be passed under a misapprehension. This is evident from the fact that subsequently on various occasions, the latest being on 06.05.05, the Municipal Council reaffirmed the decision to drop the construction of bus

terminal at Indoor Stadium and to construct the bus terminal at the site for which the present proceedings for acquisition are in motion. There is no rethinking on this issue. Along with the affidavit a copy of the resolution dt.16.05.05 is produced as Ext.R4(b).

8. The petitioners have produced additional documents Exts.P17 and P18. Ext.P17 is series of photographs produced to show that pursuant to the directions in compliance with the directions of the DMO, protection wall around the well has been constructed and that other measures recommended by the DMO for making well pollution free, have been taken. Ext.P18 is a photograph showing the new approach road which has been constructed by the Municipality after acquiring 42 cents of land for having an access to the Municipal land where it was initially proposed to establish bus terminal.

9. Very Elaborate submissions were addressed before me by Sri.O.V. Radhakrihshnan, Senior counsel for the petitioners and Sri.V.M. Kurian, learned Standing Counsel for the Municipality. My attention was drawn to the various documents placed on record, the rival pleadings and to the statutory provisions particularly Sections 17(1), 17(2) and 17 (4) of the Land Acquisition Act. A catena of decisions such as those in **State of Punjab v. Gurdial Singh** (1980) 2 SCC 471; **Omprakash v. State of U.P.**(1998) 6 SCC 1; **Union of India v. Shakuntala Gupta**

(2002) 7 SCC 98; **Union of India v. Mukesh Hans**(2004) 8 SCC 14; **Hindustan Petroleum Corporation Ltd. v.Darus Shapur Chenai** (2005) 7 SCC 627; **Nandeshwar Prasad v. U.P. Govt.** AIR 1964 SC 1217, **Narayan v. State of Maharshtra** AIR 1977 SC 183, **Mohinder Singh v. Chief Commissioner** AIR 1978 SC, 1981 KLT were cited before me by Sri. Radhakrishnan. Sri.V.M. Kurian per contra would emphasis before me that there is no gain saying the fact that the establishment of a bus terminal at the eastern side of the municipal town is very necessary in public interest. The town bus stand, learned counsel is only a bus bay. Counsel would also take me through Ext.P16, Ext.R4(a), Ext.P8 and various other documents to argue that there is no warrant at all to interfere with Exts.P9, P10 and also Ext.P15 order of the Land Revenue Commissioner.

10. Having considered the rival submissions made before me by the learned Senior Counsel and the Standing Counsel for the Municipality in the light of the pleadings and documents available on record and on considering the ratio emerging from various decisions cited at the Bar, I am in agreement with Mr.V.M.Kurian, Standing Counsel for the Municipality that the proposal of the Municipality to acquire the petitioner's property for the establishment of their new bus

stand at Moonani is not vitiated by malafide. The purpose of establishing yet another private bus terminal in addition to the one at Kottaramattom, I agree is a need of the Municipality town. The town bus stand though called a bus stand is actually a big bus bay through which buses enter and stop for collecting the passengers and to drop the elighting ones. When the Municipal Council says that the town which is a fast developing one and needs another bus terminal on its eastern sector, this Court will not be justified in saying that it is not so unless there are of cogent materials to show that the Municipality's statement is wrong. I do not find any material placed in this case to show that the need to have a bus terminal at the eastern part of the town is not genuine.

11. But at the same time I am not impressed by the stand of the Municipality that there is justification for invoking the emergency provisions under Section 17(4) of the Land Acquisition Act. Considering the issue whether invocation of the emergency clauses dispensing with Section 5A enquiry is justified in this case, in the context of the ratio emerging from the judgments of the Supreme Court cited before me by Sri.Radhakrishnan, I am of the view that the same has to be answered in favour of the petitioners. Accordingly, while holding that the purposes of establishing a bus stand in the property of the petitioner is a public

purpose justifying acquisition of the petitioner's property, I quash Ext.P15 and consequently the Government Order granting permission to invoke emergency provisions under Section 17(4) and direct respondents to proceed with the acquisition under the ordinary provisions by inviting objections from the petitioners and by conducting enquiry under Section 5 A. The enquiry under Section 5 A had will be completed by the respondents at their earliest.

It is made clear that Ext.P9 has not been quashed in the entirety but has been quashed only to the extent emergency clauses has been permitted to be invoked. Enquiry under Section 5A will be initiated pursuant to Ext.P9.

The Writ Petition is allowed to the above extent. No costs.

PIUS C. KURIAKOSE, JUDGE

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